IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 17025/2006

Lt. Col. Mukul Dev ...Petitioner through Major (Retd.) K. Ramesh, Adv.

Versus

Union of India & Ors. ...Respondent through Mr. Rajeeve Mehra, Adv. for UOI
Mr. Sanjeev Sachdeva with Mr. Preet Pal Singh, Advs. for BCI

Date of Hearing : August 09, 2007

Date of Decision : August 16, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

J U D G M E N T

VIKRAMAJIT SEN, J.

1. The President of India is the Supreme Commander of the Defence Forces of the Union. By letter dated 27.9.2006

the Chief of Army Staff was informed that “the President is pleased to decide that notwithstanding anything contained in Paragraph 82 of the Regulations for the Army the Inter Arm Transfer of IC-46298N Lt Col Mukul Dev is sanctioned as a one time measure from Artillery to the JAG's Department provided the officer is in possession of Bachelor's Degree in Law from any recognised University”. It is indeed extraordinary that the Respondents have flagrantly failed to honour the decision of the Commander-in-Chief of the Indian Army, who is the President of our Republic. On the contrary, the Petitioner, Lt. Col. Mukul Dev, Assistant Judge Advocate General, HQ CIF-Counter Insurgency Force (U) was posted to HQ 11 Corps Artillery as per Telegraphic Order dated 30.10.2006. It is this Posting Order, which is irreconcilably in variance with the decision of the President of India that has been assailed before us.

2. The Petition discloses that the Petitioner had sought and obtained a transfer to the JAG Department in March, 2003. He has conducted several Court Martials; by letter

dated 19.1.2005 the Military Secretary suggested to the Petitioner that he should apply for Inter Army/Service Transfer (IAST for short) to the JAG Department through proper channels; and to pass JAG Departmental Examination which would be mandatory for a permanent transfer to JAG. His application for IAST was recommended by his Officer Commanding as well as General-Officer-Commanding. Respondent No.3 (JAG Department) vide DTG : 132003 Srl No 145031 informed the relevant Command that the Petitioner had qualified the JAG's Departmental Exam October 2005. After exchange of sundry communications, and despite the directions of the President of India, the Respondents have not transferred the Petitioner to Respondent No.3. It should be noted that the Petitioner has stated that due to an injury sustained by him, his career progression in the regiment of Artillery had been jeopardised and it was for this reason that he had worked towards a transfer to the JAG Branch.

3. The Chaudhary Charan Singh University, Meerut has awarded the Petitioner “the Degree of BACHELOR OF

LAWS of this University in the Examination of 1996 after pursuing three years professional course" in the Second Division (underlining has been added). The Petitioner has candidly admitted that he has not fulfilled the essential attendance criteria, i.e. 2/3rd of the total number of lectures delivered, set down by the Bar Council of India and for this reason he may not be eligible to pursue a career as an Advocate.

4. The stand that has been taken by the Respondents in the Counter Affidavit is that the Law Course undertaken by the Petitioner cannot be equated with any normal academic course as attendance of lectures, tutorials and seminars are essential aspects to train law students. It has been averred that the existing Policy being followed in the Army for commissioning into JAG Department is eligibility of the incumbent for enrollment as an Advocate. A copy of an Advertisement to this effect had been filed at the time of Final Arguments. The submission is that "it is yet to be established by the Petitioner as to how and when he cleared minimum attendance as prescribed by the Rules for

LLB Degree Course". The Respondents have highlighted the admission and acknowledgment of the Petitioner to the effect that he was posted in Faridkot (Punjab), Dinjan (Assam) and NC Hills (Assam) during 1993-96. The Respondents have also denied the Petitioner's assertion that he did well in the Court Martials and other related legal tasks assigned to him; that his posting as AJAG HQ C1 Force (K) "was only due to turnover of officers, exigencies of service etc."; that the post of AJAG was not an independent assignment and that merely qualifying the LLB Degree will not automatically entitle officers from other Arms and Services to be transferred to the JAG Department.

5. It will be recalled that the President of India had, notwithstanding Paragraph 82 of the Regulations, been pleased to transfer the Petitioner to the JAG Branch. Paragraph 82 of the Regulations stipulates that - "Permanent commissioned officers of all Arms and Services of the rank of major and below, who hold a Bachelor's degree in law professional from a recognised university are

eligible for transfer to the Judge Advocate General's Department". The Degree awarded to the Petitioner by the Chaudhary Charan Singh University specifically records that it is an LLB Professional Degree. We had the advantage of hearing Mr. Sachdeva, learned counsel for the Bar Council of India, who had brought out the distinction between professional and other (academic) LLB Degrees. It appears that certain Universities offer a Degree after pursuing only a two year course. Attendance requirements vary from one University to another but so far as the Bar Councils are concerned, unless a University prescribes a minimum attendance of 2/3rd of the lectures delivered, and insists on student's compliance with this requirement, a person would not be granted a licence by the Bar Council to practice the profession of law as an Advocate. Mr. Sachdev had clarified that apart from this stringent stipulation, the Bar Council is not concerned with the award of the LLB Degree to any student.

6. Mr. Mehra, learned counsel for the Respondent, has drawn support from the submissions of Mr. Sachdev to

submit that if the Petitioner stands disentitled to the grant of a licence to practice as an Advocate by any Bar Council he is *per se* not eligible for a transfer to the JAG Branch. He has attracted our attention to the decision in *Bar Council of India -vs- Aparna Basu Mallick*, (1994) 2 SCC 102 where the Supreme Court, following their earlier decision in *Baldev Raj Sharma -vs- Bar Council of India*, 1989 Supp (2) SCC 91, ruled that in order to be eligible to practice as an Advocate the person concerned should mandatorily have attended three year study as a regular student, by complying with the criteria of attending of a minimum of two-thirds of the lectures delivered. We are of the view that these decisions are not topical or relevant for the answer to the conundrum before us since the prayer of the Petitioner is not his enrollment as an Advocate by the bestowal of a licence by a Bar Council. The Petitioner's relief is in his permanent transfer to the JAG Branch.

7. Major Ramesh, learned counsel for the Petitioner, has argued that once a candidate is allowed to appear in the Law examination he cannot be deprived and denied the

fruits of his passing that Examination. Reliance has been placed on *Shri Krishan -vs- The Kurukshetra University, Kurukshetra*, AIR 1976 SC 376. Their Lordships observed that -"Once the candidate is allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear". In other words, *promissory estoppel* prohibits placing the Petitioner in a position of disadvantage. Major Ramesh has distinguished *Central Airmen Selection Board -vs- Surender Kumar Das*, AIR 2003 SC 240 where their Lordships declined to press the principle of *promissory estoppel* in favour of the Petitioner, manifestly because the person had misled the Authorities to take the decision to select him. He contends that the Petitioner has at no stage stated that he had fulfilled the criteria of attendance of a minimum of 2/3rd of the lectures delivered. He has highlighted the fact that the Degree received by the Petitioner explicitly states that it is

a Professional Degree. Accordingly, the Petitioner is entirely eligible as far as Paragraph 82 of the Regulations is concerned. It is an altogether different case that the Petitioner would not be entitled to practice as an Advocate.

8. Having considered the rival cases we are of the opinion that the Respondents are not justified in insisting that the Petitioner "should meet the eligibility criteria for enrollment as an Advocate". This requirement can legitimately be insisted upon at the threshold, but if it has to be applied at any stage thereafter Paragraph 82 of the Regulation would have to be amended. The Regulation would have to stipulate that in addition to having attended a three year Professional LLB Course, [which the Petitioner has successfully undergone as evidenced by his Degree] every officer in the JAG Branch could also be additionally eligible for enrollment as an Advocate. We may observe, *en passant*, that the natural consequence of such a Regulation may be that only such officers who are eligible to be enrolled as Advocates can be transferred to the JAG Branch. Thereupon the initial transfer of the Petitioner into

the JAG Branch would be irregular and illegal. The ramifications of such an interpretation would be highly deleterious to the interests of the Indian Army as persons such as the Petitioner have played pivotal roles and responsibilities in sundry Court Martials. Be that as it may, we are of the unequivocal view that the Regulation, as it presently stands, does not envisage that only those officers can be considered for service in the JAG Branch who are eligible for enrollment as Advocates.

9. We commenced this Judgment with a reference to Article 53 of the Constitution of India which reposes and vests in the President of India the Supreme Command of the Defence Forces of the Union. We have also underscored the fact that the decision of the President to allow the transfer of the Petitioner to the JAG Branch was notwithstanding Paragraph 82 of the Regulations. The Respondents have glossed over this aspect of the case. In doing so, they have not advanced the interests of the discipline of the Indian Army. Once the decision of the President is ignored, this indiscipline would inexorably

percolate to lesser commands. In case the Respondents were dissatisfied with the decision of the President of India they ought to have taken necessary steps to reverse the decision. It does not behove the Respondents to ignore the decision of the President of India and act contrary to its expressed intent.

10. In these circumstances the Writ Petition is allowed. The Respondents are directed to forthwith comply with the decision of the President of India sanctioning the Inter Army/Service Transfer of the Petitioner to Respondent No.3. We reiterate that the Petitioner is in possession of a Bachelor Degree in Law from a recognised University, i.e. Chaudhary Charan Singh University, Meerut, which is also a professional Degree. We, however, clarify that our decision shall not entitle the Petitioner to enrollment as an Advocate or to any other appointment which prescribes that an incumbent should be eligible for enrollment as an Advocate in order to be considered for appointment in that employment. All pending applications stand disposed of.

11. The Petitioner shall be entitled to costs of Rs.10,000/-. A copy of this Judgment be dispatched by the Registry directly to the Chief of Army Staff.

(VIKRAMAJIT SEN)
JUDGE

August 16, 2007
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(S.L. BHAYANA)
JUDGE